REMARKS

Reconsideration of the above-identified application, in view of the following remarks, is respectfully requested.

This submission is in response to the Office Action dated February 24, 2005. Pending claims are 1-3 and 5-9. No new matter is added by the present response.

Claims 1-2 and 5-8 have been rejected as obvious under 35 U.S.C. § 103(a) over Koczab in view of newly cited U.S. Patent No. 5,217,445 (to Young et al.). Specifically, the Examiner states that Koczab teaches all aspects of the claimed invention with the exception of binder in resin the acquisition zone. The Examiner is of the opinion that Young provides the missing teaching of an acquisition layer with thermoplastic polymers and binder resin. Therefore, according to the Examiner, it would have been obvious for one skilled in the art at the time of the invention to combine these references to arrive at the claimed invention.

The rejection is respectfully traversed, and reconsideration is respectfully requested.

Applicants submit that the claimed invention is not obvious over the cited art. As conceded by the Examiner, Koczab does not teach all aspects of the invention, but rather fails to teach the binder resin. Applicants submit that Koczab also fails to teach the density gradient, the containment layer, and the airlaid composition of the storage layer in the claimed invention. Applicants submit that reliance on Young does not provide the missing teachings of Koczab.

Young provides a teaching of binders and/or thermoplastic fibers in an acquisition layer. However, Young's teachings are limited to wetlaid structures. Young teaches that, "[w]et-laid structures wick body fluids much better than similar air-laid structures. This is because wet-laid structures suffer less wet collapse than do air-laid structures, even air-laid structures with stiffened cellulosic fibers. This, in turn, enables the wet-laid structures to maintain their capillary channels and void spaces better." 14:2-12. Applicants submit that there is no motivation to combine Young with Koczab. Young clearly teaches away from an airlaid product, whereas Koczab only teaches an airlaid product. Therefore, one skilled in the art would

not be motivated to use the wetlaid acquisition layer of Young with the airlaid product of Koczab to arrive at the claimed invention. Furthermore, even with the Examiner's reliance on Young to provide a teaching of binder resin, Koczab is still missing the teachings regarding the density gradient and a containment layer. Therefore, applicants submit that the claimed invention is not obvious over the cited art and respectfully request the rejection be withdrawn.

Claims 3 and 9 have also been rejected as obvious over Koczab in view of Young and further in view of H1657 (to Hammons et al.). Specifically, the Examiner states that Koczab and Young teach all aspects of the invention with the exception of the composition of the storage layer. The Examiner relies on Hammons to provide this missing teaching. According to the Examiner, it would have been obvious to one skilled in the art at the time of the invention to combine these references to arrive at the claimed invention.

This rejection is respectfully traversed, and reconsideration is respectfully requested.

As stated above, Young teaches away from an airlaid structure, and is directed solely to wetlaid structures. Therefore, Young cannot be combined with Koczab and Hammons to arrive at the claimed invention. Hammons discloses an absorbent article having an acquisition and a storage layer. In Hammons, the storage layer may be airfelt (8:57). However, this teaching does not provide the missing teaching of Koczab and Young as previously discussed. Hammons fails to teach or suggest an absorbent article with the specific acquisition and storage layer compositions as presently claimed. The Examiner has also failed to identify any motivation to combine the airfelt feature of Hammons with the structures of Koczab or Young. Obviousness can only be established where there is some teaching, suggestion or motivation in the prior art that would have led a person of ordinary skill to combine or modify the references. See In re Napier, 55 F.3d 610, 613, 34 USPQ2d 1782, 1784 (Fed. Cir. 1995); see also In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). There is no disclosure in either reference that would have led a person of ordinary skill in the art to have made this specific choice and modification to arrive at the presently claimed invention. Absent some teaching or motivation to combine the elements recited in the references, it is improper to predicate a rejection on the mere

identification of individual components of the claimed invention. In re Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed").

Furthermore, the Examiner uses improper hindsight in the present rejection. See In re Fine, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) ("One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention"); see also In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998) ("To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness."). Accordingly, claims 3 and 9 are patentable under 35 U.S.C. §103(a) because Koczab in view of Young, and in further view of Hammons would not have suggested the claimed invention. Withdrawal of the rejection is respectfully requested.

In view of the above remarks, it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

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Respectfully submitted,

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